

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CUPERTINO MUNICIPAL CODE CHAPTER 2.80 AND SECTIONS
19.102.040, 19.148.030, 19.148.050, 19.148.060, AND 19.148.090 TO ADOPT A NAME
CHANGE FOR THE FINE ARTS COMMISSION TO THE ARTS AND CULTURE
COMMISSION**

The City Council of the City of Cupertino finds that:

1. WHEREAS, the City Council assigned a Fiscal Year 2021-2022 City Work Program to change the name of the Fine Arts Commission to broaden the reach of potential interest and align with the commission goals.
2. WHEREAS, at the January 24 Fine Arts Commission meeting, the Commission reviewed Art Commission names in 13 Santa Clara County cities and proposed two options for the name change.
3. WHEREAS, a Fine Arts Commission Name Change Survey was available for public input from April 18 to May 13.
4. WHEREAS, the Fine Arts Commission reviewed the survey responses on May 23 and recommended to City Council to consider and adopt a name change for the Fine Arts Commission to the Arts and Culture Commission.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful,

unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action a commission name change would have no or only a de minimis effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on June 21, 2022 and **ENACTED** at a regular meeting of the Cupertino City Council on July 19, 2022 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

**Attachment A – Amending Cupertino Municipal Code chapter 2.80 and sections
19.102.040, 19.148.030, 19.148.050, 19.148.060, and 19.148.090 to adopt a name change
for the Fine Arts Commission to the Arts and Culture Commission**

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.

1. Chapter 2.80 of the Cupertino Municipal Code is amended to read as follows:

Chapter 2.80: Arts and Culture Commission

2. Amendments to Section 2.80.010 concerning changes to the Commission's name:

2.80.010 Established.

The Arts and Culture Commission is established. The Arts and Culture Commission shall consist of five members, none of whom shall be officials or employees of the City, nor cohabit with as defined by law, nor be related by blood or marriage to any member of the Commission, the City Manager or the staff person(s) assigned to this Commission. At least three members shall be City of Cupertino residents. Members of the Arts and Culture Commission shall be appointed by the City Council. Membership will be drawn to represent the arts, citizens and business community on an approximately equal basis.

3. Amendment to Section 2.80.020 concerning changes to the Commission's name:

2.80.020 Terms of Office.

A. Commissioners serve at the pleasure of the City Council. The term of office of the members of the Arts and Culture Commission shall be for four years and shall end on

January 30th of the year their term is due to expire. No commissioner shall serve more than two consecutive terms, except that a commissioner may serve more than two consecutive terms if he or she has been appointed to the Commission to fill an unexpired term of less than two years.

B. The appointment, reappointment and rules governing incumbent members of the Commission are governed by the Resolution of the Cupertino City Council which governs advisory bodies.

4. Amendments to Section 2.80.050 concerning changes to the Commission's name:

2.80.050 Meetings–Quorum.

A. The Arts and Culture Commission shall establish a regular place of meeting and rules of conduct thereof and shall hold at least one regular meeting every other month.

B. A majority of the Arts and Culture Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

5. Amendment to Section 2.80.080 concerning changes to the Commission's name:

2.80.080 Powers and Functions.

A. The powers and functions of the Arts and Culture Commission shall be to foster, encourage and assist the realization, preservation and advancement of arts and culture for the benefit of the citizens of Cupertino.

B. To fulfill their mission, the Commission may involve itself in the following activities:

1. Act as a catalyst for the promotion of arts and culture activities;
2. Keep current on potential arts and culture activities which would be available to the community;
3. Provide liaison between various arts and culture activities;
4. Provide a means for coordination for arts and culture groups or facilities which may exist within the community;
5. Maintain an inventory of facilities available for related arts and culture activities within the community;
6. Provide screening and/or review for arts and culture activities wishing to obtain city funds or utilize public facilities;
7. Provide information to the community relating to the arts;
8. Foster the development of public art within the community;
9. Be vigilant in exploring and advancing the range of arts and culture activities available to the community;
10. Enhance the interaction between arts and business;
11. Any other activity which may be deemed appropriate and necessary.

6. Amendment to Section 2.80.090 concerning changes to the Commission's name:

2.80.090 Compensation–Expenses.

Members of the Arts and Culture Commission shall serve without compensation. Commissioners may be reimbursed for necessary expenses reasonably incurred by them while acting in their official capacity subject to the approval of the City Manager.

7. Amendment to Section 19.102.040 concerning changes to the Commission's name:

19.102.040 Outdoor Lighting Requirements.

A. Submittal Requirements: Projects subject to outdoor lighting regulations must submit the following information:

1. A site plan indicating the location of all outdoor lighting fixtures.
2. A description of each lighting fixture. This description may include, but not be limited to, manufacturer's catalog cuts and drawings (including sections if requested), lamp types, and lumen outputs.
3. Photometric plans, prepared, stamped and signed by a licensed professional engineer qualified in outdoor lighting, depicting the location of all outdoor lighting fixtures and building-mounted lighting fixtures and a maximum ten-foot by ten-foot grid of both the initial and maintained lighting levels on the site, including any impact on adjacent properties.
4. The project lighting plan shall indicate how lighting has been coordinated with any associated landscaping plan to prevent site planning conflicts.
5. Any other information the Director may determine is necessary to ensure that the proposed lighting is in compliance with the provisions of this Chapter.
6. Any of the above requirements may be waived by the Director of Community Development when determined to be unnecessary for determining compliance with the provisions of this Chapter.

B. Outdoor Lighting Standards

1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of way to avoid light trespass, except:

a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.

b. Architectural Features: Uplighting may be used to highlight special architectural features.

c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Arts and Culture Commission.

d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.

e. String Lighting: String Lighting may be used in compliance with Section 19.102.040 (B) (12).

2. Illumination Levels

a. No exterior light, combination of exterior lights, or activity shall cast light exceeding zero point one (0.1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source, except if two adjacent properties are non-residential, or function as a shopping center, and agree to coordinate lighting.

b. No direct off-site glare from a light source shall be visible above three feet at a public right-of-way.

c. The maximum light intensity on a site shall not exceed a maintained value of ten foot-candles, when measured at finished grade.

d. Parking lots, sidewalks and other areas accessible to pedestrians and automobiles on properties with four or more units, mixed-use development, and non-residential development shall be illuminated with uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:

i. Average horizontal maintained illumination shall not be more than three foot-candle.

ii. Maximum to minimum ratio should be between 6:1 and 10:1, but shall not be more than 10:1.

e. Critical areas of illumination such as stairways, ramps and main walkways may have a higher illumination.

3. All light sources shall have a maintained correlated color temperature of 3,000 Kelvin or less.

4. All outdoor lighting shall be fully extinguished or be motion sensor operated by 11:00 p.m. or when people are no longer present in exterior areas, whichever is later, except for:

a. Critical lighting pursuant to section 2(e) above;

b. Any lighting at building entrances, parking areas, walkways, and driveways area required to remain illuminated after 11:00 p.m. by the California Building Code or state law;

c. Lighting of an appropriate intensity, allowed in conjunction with uses that are permitted to operate past 11:00 p.m., with a conditional use permit; and

- d. Outdoor solar powered pathway lights that are 25 lumens or less.
- e. Lighting that illuminates a pedestrian pathway (examples include bollard, in-place step, or building mounted), provided that such lighting is a maximum height of four (4) feet above the pathway, fully shielded, and downward directed.
- 5. Automated control systems, such as motion sensors and timers, shall be used to meet the outdoor lighting requirements.
 - a. Photocells or photocontrols shall be used to extinguish all outdoor lighting automatically when sufficient daylight is available.
 - b. All lighting activated by motion sensors shall extinguish no more than 10 minutes after activation.
 - c. Automated controls shall be full programmable and supported by battery or similar backup.
- 6. Security lighting may be provided when necessary to protect persons and property. When security lighting is utilized only the following standards shall apply:
 - a. Security lighting shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Code. All lighting activated by motion sensors shall extinguish no more than 10 minutes after activation. Automated controls shall be fully programmable and supported by battery or similar backup.
 - b. Security lighting shall be downward directed, shielded, and not be mounted at a height that exceeds 12 feet, measured from the adjacent grade to the bottom of the fixture.
 - c. Floodlights shall not be permitted.
 - d. Security lights intended to illuminate a perimeter, such as a fence line, are permitted only if such lights do not result in light trespass.
 - e. Motion-activated security lights shall not use lamps that exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1,600 lumens (whichever is less).
- 7. Lighting design standards:
 - a. Lighting fixtures must be of a design that complements building and landscaping design.
 - b. Lighting fixtures shall be appropriate in height, intensity, and scale to the use they are serving. Parking lot lights in non-residential zones shall not exceed a height of 21 feet, and any wall-mounted lights shall not exceed a height of 12 feet, measured from the adjacent grade to the bottom of the fixture.
- 8. Service Station Canopies: The following standards shall apply to service station canopy lighting, in addition to all other applicable standards:
 - a. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy.
 - b. Light fixtures shall not be mounted on top of the fascia of such canopies.

c. The maximum light intensity under the canopy shall not exceed an average maintained foot-candle (horizontal) of 12.5, when measured at finished grade.

d. The fascia of such canopies shall not be illuminated, except for approved signage in compliance with Chapter 19.104.

9. Areas around Automatic Teller Machines shall meet minimum standards required by the State of California Business and Professions Code.

10. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.

11. Lighting in ML zones shall additionally comply with the standards in Chapter 19.72.

12. String Lighting Regulations:

a. String lighting is different from holiday and/or seasonal lighting, and in addition to subsections (b) and (c) as applicable below, shall not be:

i. Blinking and/or chasing lights

ii. Secured with materials or in a manner that will puncture the skin or restrict the growth of any living landscape feature.

iii. Attached to a fence in a manner that permits light trespass to adjacent property.

iv. More than a 2.8-watt incandescent bulb system or equivalent LED system and emit no more than 42 lumens (whichever is less).

b. Residential Areas: String lighting is permitted subject to the following requirements:

i. It shall not illuminate more than fifty (50) percent of the rear yard or 500 sq. ft., whichever is more restrictive.

ii. It shall not be visible from the City right-of-way.

iii. It shall be used primarily to illuminate patio areas.

iv. It shall be extinguished by 11:00 p.m.

c. Commercial and Mixed-Use Commercial Areas: String lighting may be permitted subject to the following requirements, with approval of the Director of Community Development:

i. Any development or property is permitted to submit one application for string lighting, which shall include all uses of string lighting on the development or property.

ii. It shall not illuminate an area greater than:

1. Five (5) percent of the building(s) footprint of a shopping center, and,

2. Fifteen (15) percent for a freestanding commercial building not part of a shopping center.

iii. It is limited to the lighting of the following:

1. Living landscape features (trees, shrubs, etc.), if used in combination with other highlighting or pedestrian lighting fixtures within the immediate area, and,
2. Designated outside dining or display areas.

C. Prohibited Lighting: The following types of lighting are prohibited:

1. Outdoor lighting that blinks, flashes, or rotates except those that may be permitted pursuant to Chapter 10.26.
2. Outdoor flood lights that project above the horizontal plane.
3. Lighting that unnecessarily illuminates any other lot or substantially interferes with use or enjoyment of that lot.
4. High-intensity discharge lighting for recreation courts on private property.
5. Spotlights.

D. Exemptions: The following types of lighting are exempt from the lighting requirements of the Chapter:

1. Lighting within the public right-of-way and public parks
2. Permitted lighting for signs pursuant to Chapter 19.104 of the Municipal Code
3. Temporary construction or emergency lighting
4. Short-term lighting authorized by a special events permit
5. Holiday seasonal lighting during the period of October 15 through January 15 of each year
6. Required lighting to comply with Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such lighting shall additionally comply with the requirements of this Chapter.

8. *Amendment to Section 19.148.030 concerning changes to the Commission's name:*

19.148.030 Permitted Artwork.

Types of art that may be used to satisfy the requirements of this chapter include, but are not limited to, the following:

- A. Sculpture: in-the-round, bas-relief, mobile, fountain, kinetic, electronic, or other, in any material or combination of materials;
- B. Painting: all media, including portable and permanently affixed works, such as murals;
- C. Graphic arts: printmaking, drawing, calligraphy and photography, but only when on a large public scale;
- D. Mosaics;
- E. Functional artwork created by a professional artist, such as benches, tree grates or trash receptacles;
- F. Any other form of work of art determined by the Arts and Culture Commission to satisfy the intent of this chapter.

9. Amendment to Section 19.148.050 concerning changes to the Commission's name:

19.148.050 Application Procedures for Public Artwork.

- A. An application for public artwork shall include all requirements of Chapter 19.12.
- B. Application for public art for a new development shall be made in conjunction with the review of the permits for the entire project, in order that the design and location be taken into consideration at the time of architectural and site planning, as outlined in Chapter 19.168.
- C. The Arts and Culture Commission shall review for approval the public art application and artwork. The decision of the Arts and Culture Commission may be appealed in accordance with Sections 1.16.020 and 19.12.030 of the Cupertino Municipal Code, or as amended.

10. Amendment to Section 19.148.060 concerning changes to the Commission's name:

19.148.060 Design Criteria and Artist Qualifications.

It is the intent of this chapter to provide for public art on private property without imposing the artistic preferences of the City on the owner or the developer of the property. Artistic preferences are to be primarily those of the owner or developer of the property, but the artwork and its location is subject to approval of the Arts and Culture Commission.

A permit required pursuant to Section 19.148.050 shall be granted upon a showing by the applicant that the proposed artwork meets the following criteria:

- A. The artwork is of a nature specified in Section 19.148.030.
- B. The artwork requirement is to be satisfied with one significant piece of artwork, except that the requirement may be met with several works of art when specifically found by the Arts and Culture Commission to fulfill the intent of this chapter. The artwork shall be an integral part of the landscaping and/or architecture of the buildings.
- C. The artwork shall be easily visible from the public street and be located in an area specifically designated on the project site plan. Appropriate locations include, but are not limited to, entryways to the property, greenbelts, and building exteriors. The artwork must be in permanent view to motorists and pedestrians. Artwork located at the entrance to a development should make a major statement and be visible from the main parking lot, if any. When located in proximity to major traffic thoroughfares, the artwork should be at a motorist's scale and oriented toward the view corridor of the motorist.
- D. Artwork located along Stevens Creek Boulevard or De Anza Boulevard corridors shall be large in scale and oriented to the view corridors of the motorist. Appropriate artwork in these corridors will most likely be sculptural; however, other forms of art may be considered if consistent with the intent of this chapter. Artwork should have a

visual impact upon passengers in a moving vehicle or pedestrians not less than 100 feet away.

E. The composition of the artwork shall be of permanent materials requiring a low level of maintenance. Materials used shall be durable and resistant to graffiti and the effects of weather.

F. The nature and style of the artwork shall be considered in the context of other artwork in the surrounding area in order to encourage a wide range of art styles and materials, and to create a balanced and interesting aesthetic appearance. The developer is encouraged to give preference to artists living or working in the San Francisco Bay area, and to avoid using artists whose work is already displayed as public art within the City of Cupertino boundaries.

G. Because the artwork will necessarily be highly visible to the public and be associated with City requirements, expressions of obvious bad taste or profanity shall not be approved.

H. Water and/or electronic sculpture may be permitted if adequate assurance of continued maintenance is provided.

I. Artwork shall be identified by an appropriate plaque or monument measuring not less than eight inches by eight inches. The plaque shall be made of a durable, permanent material and shall be placed near the artwork, and shall list the date of installation, title and artist, and medium.

J. The artwork shall be a permanent, maintained fixed asset of the property, and statements to this fact shall be attached or recorded to the existing CC&R's or otherwise recorded on the property deed, to advise subsequent property owners of their obligations to maintain the artwork.

K. The proposed artwork shall meet the criteria for review as set forth in the City of Cupertino Public Art Program Guidelines for Selection of Public Art, as originally adopted by the City Council Resolution No. 05-040, or as later amended.

L. The artist's qualifications will be evaluated and examples of past work may be reviewed. The review, however, shall be primarily for the purpose of determining the artist's experience with artwork of monumental proportion.

11. Amendment to Section 19.148.090 concerning changes to the Commission's name:

19.148.090 In Lieu Payment for Artwork is Discouraged.

In some instances the placement of artwork on a particular property may not be feasible. The developer or property owner may apply to the Arts and Culture Commission for an in lieu payment alternative on projects that lack an appropriate location for public art, although such alternative is strongly discouraged. In such cases, an in lieu payment of 1.25% of the construction valuation may be made to the City,

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pursuant to the approval authority provisions of Cupertino Municipal Code Section 19.12.030.